UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
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San Francisco, CA 94105-3901

JUN 23 2014

Mr. James E. Mace
Senior Project Manager
Regulatory Division
U.S. Army Corps of Engineers
Los Angeles District

Subject: U.S. Environmental Protection Agency Comments on the Foothill Parkway Westerly Extension, City of Corona, Riverside County, California

Dear Jim,

Thank you for coordinating with the U.S. Environmental Protection Agency (EPA) regarding the proposed Foothill Parkway Westerly Extension Project (Project). This letter is provided as a follow up to our September 13, 2010 comments on Public Notice SPL-2010-00155-RJV (PN) and in response to the City of Corona's (Applicant) May 2014 Habitat Mitigation and Monitoring Plan (HMMP). In our PN comment letter, EPA recommended no permit be issued until the Applicant "a) demonstrates that direct and secondary impacts to waters of the U.S. (waters) have been analyzed and minimized; and b) provides a mitigation plan that clearly compensates for any unavoidable losses of aquatic ecosystem services." We continue to have the same concerns with the potential lack of sufficient avoidance, especially to Wardlow Wash, and with various aspects of the HMMP that should be addressed prior to permit issuance.

There is insufficient information to determine whether the Applicant has avoided and minimized impacts to waters and whether the proposed project is the least environmentally damaging practicable alternative (LEDPA) pursuant to EPA's Clean Water Act Section 404(b)(1) Guidelines (40 CFR 230). The Project would fill 1.83 acres of waters, resulting in the loss of over 1.4 miles of tributary waters to Temescal Wash. Wardlow Wash alone would account for 0.8 acre and just under a mile of direct impacts from fill. Based on the information provided, it is not possible to assess the areas of waters filled by the proposed alternative and whether alternative alignments or crossings are practicable to avoid and minimize impacts. In addition, there is insufficient information to assess baseline conditions of the waters that would be filled and the aquatic resource functions that would be lost. Based on EPA's review, we recommend the Corps require the following information from the applicant prior to making a LEDPA determination and any permit decision:

1. Large scale maps of the drainages showing boundaries of jurisdictional waters with the proposed project alignment and cut and fill areas superimposed to show specifically where waters would be filled.

2. A written discussion of why the Applicant is limited to the proposed project alignment and why it is not practicable to avoid waters by adjusting the roadway footprint. Emphasis should be on Wardlow Wash and the northern portion of the Project.

3. A written discussion of alternative methods for crossing waters to avoid fill and where they could be utilized. The Applicant should also describe why alternative crossings are not practicable where such a determination is made.

4. A baseline assessment of function and/or condition of the waters that would be permanently filled by the proposed project. This would help inform the loss of waters and the Corps' use of the mitigation ratio setting checklist. EPA would appreciate the opportunity to review this information and further coordinate with the Corps as you consider the LEDPA determination and your final permit decision.

In regards to the HMMP, EPA recognizes the extent of lands and channel that would be preserved and managed for native vegetation communities but we are concerned that the control of invasive vegetation and planting of native species may not be sufficient to offset impacts from a total loss of 1.83 acres and 1.4 miles of channel, as well as the temporary impacts from the project. Implementation of the current HMMP would not likely provide sufficient information to demonstrate that functional lift of aquatic resources is enough at the project sites to satisfy a compensatory mitigation ratio checklist determination by the Corps. EPA is providing the following comments and suggestions for your consideration:

1. The proposed one-to-one mitigation ratio in Table 3 for "unvegetated streambed" seems low and is assumed not to be based on results of the Corps' compensatory mitigation ratio setting checklist. The Corps/EPA Compensatory Mitigation Rule (Mitigation Rule) provides the Corps flexibility to require a greater than one-to-one mitigation ratio based on several factors including temporal loss, method of compensation, differences in functions lost and functions gained, difficulty restoring or establishing mitigation, and distance from the impact site. The current proposal would preserve and enhance existing streams to compensate for complete fill of waters; therefore EPA believes that a ratio greater than one-to-one would be appropriate.

2. Section 2.3 states that mitigation sites will be monitored for 5 years after which meeting final performance standards is expected. The City should be aware that monitoring will be for a minimum of 5 years but that the Corps can require monitoring to be for a longer or shorter period based on meeting performance standards.

3. Section 2.4 states that the costs of site preparation, invasive species removal, revegetation, monitoring and maintenance will total approximately $2.5 million. The City should provide a breakdown for how costs are determined, especially for long-term maintenance after the interim (5-yr) monitoring period. A non-wasting endowment or other appropriate measure should be funded to ensure sufficient resources to maintain the sites in perpetuity.

4. Section 2.5 states that no special aquatic sites or other waters of the U.S. are proposed for mitigation. Based on this statement, it appears that all mitigation is proposed for the non-jurisdictional areas described earlier in the HMMP and that all mitigation will occur outside of jurisdictional boundaries.

The applicant should clearly describe how these activities would offset the total loss of 1.83 acres and 1.4 miles of waters of the U.S. by enhancing aquatic resource functions. Based on the current proposal, sufficient mitigation to offset proposed impacts of the project has not been identified.

5. Section 4.1 describes the basis for success but says nothing about improved aquatic resources. It appears that the Applicant expects invasive species management and native species revegetation will result in improvements to aquatic resources that will offset the total loss of waters at the project site. The basis for success should include a performance-based demonstration of sufficient functional lift to offset project impacts to waters.

6. Section 4.2 states that the Applicant's financial obligations will end following transfer of the sites to the Riverside Corona Resource Conservation District (RCRCD) and there is no discussion of specific financial securities during project construction, monitoring and long-term maintenance. Similar to mitigation banks and in-lieu fee programs (ILFP), permittee responsible mitigation should also provide these important financial commitments consistent with the Mitigation Rule.

7. Table 5 provides information on the proposed mitigation habitat types, including 1.05 acres of established streambed vegetation type. It is unclear what this community would include and where it would be located as it is not represented in any of the three mitigation site planting area figures.

8. If the City is proposing to "establish" streambed vegetation, or any other community for that matter, this suggests creating it in an upland area where it did not exist before as per the definition in the Mitigation Rule. Would it be more appropriate to refer to these activities as "re-establishment" or "rehabilitation" consistent with the definitions in the Mitigation Rule or are these communities really being created where they never existed before? If the later, the HMMP should identify why it is appropriate to do so and why it is expected to succeed. It is also important to note that establishing a streambed vegetation community may not be equivalent to establishing streambed and would likely not provide the same mitigation value if it does not result in a net gain of aquatic resource area.

9. The Mitigation Site 1 Conceptual Planting Layout figure does not include any establishment of willow riparian scrub or cottonwood willow riparian communities along the channel. Small areas of these two communities are present and would be preserved only. Are there additional opportunities to create new areas of these communities along the channel and provide benefits of increased riparian vegetation or are there factors, such as flows and groundwater that would be a limiting factor?

10. The HMMP should clearly define what activities would be implemented as part of enhancement and establishment measures for each site, assuming these terminologies are being used consistent with the Mitigation Rule.

11. Were reference sites used in determining the vegetation community extent and distributions at the three mitigation sites? If not, the Corps should consider requiring the use of appropriate reference sites to help determine performance standards and overall site performance.

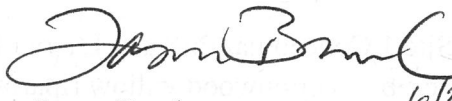
12. Mitigation Site 3 is currently turf grass and as proposed would be preplaced with oak woodland and cottonwood-willow riparian forest. The mitigation plan should clarify if the Applicant proposes removing the turf grass and planting in bare soil or planting directly in the existing turf grass. Turf grass removal could improve native species establishment and natural recruitment but would also require a robust sediment and erosion control plan during construction and until vegetation cover is established.

13. Section 6.1, Table 9 lists the proposed performance standards for the site, which are limited to percent cover and percent survival. No performance standards have been included to measure functional lift of the drainages at the mitigation sites. The applicant should refer to recent RCRCD ILFP site development plans for examples of more comprehensive monitoring and performance standards.

14. The paragraph in Section 6.5.1 Qualitative Monitoring starts with a discussion of the need for a quantitative function-based monitoring method to record baseline conditions, set performance standards, and monitor progress and states that the California Rapid Assessment Method (CRAM) will be used. The section then goes on to describe qualitative methods that consist of site walks and observations by a qualified biologist. The opening language seems more appropriate in the following section 6.5.2 on quantitative monitoring methods yet there is no discussion of the use of CRAM in Section 6.5.2 as a quantitative method. The HMMP should clarify whether CRAM will in fact be used to record baseline conditions, set performance standards, and measure success and whether a reference site would be used for comparison. This would improve the monitoring and performance standards to a more appropriate and acceptable level.

Thank you for your ongoing coordination with EPA on this project. Please contact Paul Amato at (415) 972-3847, or amato.paul@epa.gov, to discuss our comments and next steps.

Sincerely,



6/24/14

Jason Brush
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Wetlands Office